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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

IN RE: MARCANTONIO W. BARNES,

Debtor.

Case No. 23-11190-KHK

Chapter 11

**MOTION TO DISMISS OR IN THE ALTERNATIVE CONVERT BANKRUPTCY CASE
AND MEMORANDUM IN SUPPORT THEREOF**

Newtek Small Business Finance, LLC (“Newtek”), by counsel, moves the Court pursuant to 11 U.S.C. § 1112(b) to dismiss or, in the alternative, to convert Marcantonio W. Barnes’ chapter 11 bankruptcy case, and in support thereof, states as follows:

1. On July 25, 2023 (the “Filing Date”), Marcantonio W. Barnes (the “Debtor”) filed a voluntary chapter 11 petition in this Court.

2. Marc E. Albert, Esq. was appointed Chapter 11 Subchapter V Trustee in this case and filed on July 15, 2024 a Chapter 11 Subchapter V Trustee's Report of No Distribution [Docket No. 122], wherein he certified that his administration of the estate has been completed and requested he be discharged of his duties as trustee.

Jurisdiction

3. This matter is a core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. §157.

4. Venue lies properly in this Court pursuant to 28 U.S.C. §1409.

Background

5. The Debtor's Chapter 11 Plan Small Business Subchapter V (the "Plan") was filed on April 8, 2024 [Docket No. 100] and was confirmed by the entry of an Order Confirming Plan on May 17, 2024 [Docket No. 112].

6. On or about February 9, 2022, Safetypawz LLC executed a Note in favor of Newtek in the original principal amount of \$450,000.00, together with all amendments, renewals, and consolidations (the "Note").

7. The Debtor guaranteed the Note pursuant to an Unconditional Guarantee of the same date (the "Guarantee").

8. The Note and Guarantee are secured by, among other things, that certain Deed of Trust also dated February 9, 2022 (the "Deed of Trust") and together with the Note, Guaranty, and any related loan documents, the "Loan Documents") granting Newtek a second lien on the Debtor's real property commonly known as 10590 Beach Mill Road, Great Falls, Virginia 22066 (the "Real Estate").

9. The Plan provides that Newtek maintains a fully secured claim on account of its proof of claim number 10 (the "Newtek Claim") filed in the case in the amount of \$437,637.84 and that the claim will be paid in accordance with the Loan Documents, which call for the payment of regular monthly payments as set forth therein (the "Monthly Payments"). The Plan further provides that past due arrearage under the Newtek Claim will be paid in 20 equal quarterly installments over the 5 year term of the Plan (the "Quarterly Arrearage Payment").

10. The Debtor failed to make the first Monthly Payment and Quarterly Arrearage Payment that was due under the Plan on July 1, 2025, which resulted in the occurrence of a plan default and the filing by Newtek of a Notice of Chapter 11 Plan Default (the "First Default").

Notice”) on July 30, 2024 [Docket No. 125]. The Debtor subsequently cured the default as allowed under the Plan.

11. After making the payments needed to cure the default under the Plan reflected by the First Default Notice, the Debtor made Monthly Payments and Quarterly Arrearage Payments sporadically thereafter, which resulted in Newtek filing its second Notice of Chapter 11 Plan Default (the “Second Default Notice”) on January 24, 2025 [Docket No. 131].

12. Although the Debtor had no right under the Plan to cure the default since a previous default occurred by the Debtor within a rolling one-year period, Newtek allowed the Debtor to catch up the past due payments related to the Second Default Notice.

13. After making the payments needed to cure the default under the Plan reflected by the Second Default Notice, the Debtor failed to make any further Monthly Payments or Quarterly Arrearage Payments thereafter and Newtek filed its third Notice of Chapter 11 Plan Default on April 22, 2025 (the “Third Default Notice”) [Docket No. 133].

14. Although the Debtor had no right under the Plan to cure the default since a previous default occurred by the Debtor within a rolling one year period, Newtek gave the Debtor until May 1, 2025 to catch up the past due payments related to the Third Default Notice, but despite this opportunity, the Debtor failed to make the past due payments due Newtek under the Plan.

15. The Debtor has also failed to pay 2024 real estate taxes for the first and second half of the year due on July 28, 2024 and December 5, 2024, respectively, that are owed on the Real Estate and that came due since the confirmation of the Plan. These amounts, with interest and penalties, equal not less than \$8,042.93 due for the first half of 2024 and \$13,551.53 for the second half of 2024, for a total of not less than \$21,595.45. The failure to pay these taxes

constitutes a further default under the Loan Documents and under the Plan. Interest and penalties continue to accrue on these amounts.

16. The Debtor has also failed to pay the past due taxes that came due before the confirmation of the Plan for the tax years 2022 and 2023, which, with penalties and interest, are not less than \$18,602.27, with penalties and interest continuing to accrue. In total the past taxes, penalties and interest for the years 2022 through 2024 are not less than \$40,197.72, with penalties and interest continuing to accrue.

17. On information and belief, based on information obtained from the Fairfax County, Virginia Department of Tax Administration, certain of the past due real estate taxes have been referred to a collection attorney and additional fees have been assessed as a lien on the Real Estate, thereby creating a further default under the Loan Documents and the Plan.

18. As reflected by a Notice of Chapter 11 Plan Default filed by the Internal Revenue Service (the “IRS Default Notice”) on May 5, 2025 [Docket No. 134], the Internal Revenue Service asserts the Debtor has also defaulted under the Plan as a result of its failure to make any of the monthly payments of \$8,409 due the under the Plan since its confirmation.

Grounds for Relief

19. The Debtor’s numerous defaults that have occurred under the Plan constitute material defaults for which cause exists for dismissing or, in the alternative, converting the case pursuant to United States Bankruptcy Code (the “Bankruptcy Code”) section 1112(b)(1) and (4)(N).

20. Based on the foregoing, cause exists for dismissing the Debtor’s bankruptcy case or, in the alternative, converting the Debtor’s case to a case under chapter 7 of the Bankruptcy Code.

WHEREFORE, Newtek respectfully requests that the Court enter an order dismissing the Debtor's bankruptcy case or, in the alternative, converting it to a case under chapter 7 of the Bankruptcy Code and granting such further relief as may be deemed appropriate.

Dated: May 8, 2025

NEWTEK SMALL BUSINESS FINANCE, LLC

By: /s/ Michael A. Condyles
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CERTIFICATE OF SERVICE

Pursuant to the Local Rules of this Court, I hereby certify under penalty of perjury that on May 8, 2025, I served a copy of this document by first class mail, postage prepaid on the following necessary parties, including all creditors and parties in interest as follows:

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